

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10370 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JAGDISHBHAI M PARMAR

Versus

ADDL. DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 10370 of 2003
MR AS SUPEHIA for Petitioner No. 1
MS FALGUNI PATEL, Ld. AGP for Respondent No. 1-2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 23/07/2003

ORAL JUDGEMENT

1. Rule. Ms.Falguni Patel, learned AGP, waives service of rule. With the consent of the parties the matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner was granted licence for running fun-fare (Anand Mela) and the licence was issued on 5-7-2003 for running fun-fare from 5-7-2003 to 25-9-2003. The copy of the licence is produced at Annexure "A". The said licence was granted on various conditions, which the petitioner had to comply with. It is the case of the petitioner that on 15-7-2003 by the impugned order, the licence came to be cancelled by the Additional District Magistrate, Rajkot without giving any opportunity or show-cause notice to the petitioner and, therefore, this petition.

3. Pursuant to the notice issued by this Court, the learned AGP has appeared and she has submitted, inter alia, that as there was breach of conditions of the licence, the authority has taken decision of cancelling the licence. She submitted that the main condition for which there is non-compliance by the petitioner is that the fitness certificate for merry-go-round (Chakrani) is not obtained and the insurance of merry-go-round (Chakrani), Aeroplane, etc., the games and rides is not taken. She also submitted that certain games like dart game, ball-throw game, anka throw game can be said to be gambling activity which was prohibited and, therefore, also the authority found that the licence deserves to be cancelled. She has not been able to deny the contention that any show-cause notice or opportunity of hearing was not given before the cancellation of the licence.

4. I would have considered the matter for examining the legality and validity of the order for cancellation of the licence on the ground of non-observance of principles of natural justice, however, Mr.Supehia has submitted for examination of the case on merits, more particularly, because in the midst of running of fun-fare the licence has been cancelled. If the matter is considered on the point of observance of principles of natural justice, the consequence may be that this Court may have to remand the matter to the authority to follow principles of natural justice and then to allow the authority to take decision. If such exercise is undertaken, it may result into consuming more time and since it has already been submitted by the petitioner to examine the matter on merits without seriously pressing for point of natural justice, I find it proper,

considering the peculiar facts and circumstances of the case, to examine the matter on merits of the order of the authority.

5. Alleged breach of conditions regarding treating dart game, ball throw game and Anka throw game as gambling, in my view, cannot be sustained at all, because even under the Bombay Prevention of Gambling Act, any game based on skill would fall within the exception of the gaming. The aforesaid games are depended upon the expertise of the persons who are playing the same and it cannot be said as a game of taking chance which is not under the control of the persons who are participating in the game. As such any game based on pure skill and expertise cannot be said to be gaming which prohibited under the Bombay Prevention of Gambling Act. Therefore, in my view, such ground on the part of the authority cannot be sustained in law.

6. So far as the ground of breach of fitness certificate of merry-go-round (Chakrani) and another ground of getting insurance of merry-go-round (Chakrani), Aeroplane, etc., appears to be in the larger public interest with a view to maintain safety and security of the persons who are using the same and, therefore, it can be said that the authority was justified in insisting for fitness certificate and ensuring the safety of such games which involve a degree of risk. The other conditions for which the grievance raised does not appear so serious, except Conditions No.14 and 18 as referred to hereinabove.

7. Mr.Supehia, learned Counsel appearing for the petitioner, during the course of hearing has also agreed that the petitioner is ready to comply with both the aforesaid conditions of producing the fitness certificate and getting the insurance for the aforesaid games covered by Conditions No.14 and 18 of the licence as the case may be.

8. In view of the aforesaid discussion, the order dated 15-7-2003 passed by the Additional District Magistrate, Rajkot at Annexure "B" is quashed and set aside on condition that the petitioner shall produce fitness certificate and get the insurance of merry-go-round (Chakrani), aeroplane and other games as per Conditions No.14 and 18 of the licence within three days from today and after the compliance is made by the petitioner and verified by the learned District Magistrate, the petitioner shall be allowed to continue with the fun-fare as per the licence. The petition is

allowed to the aforesaid extent. Rule made absolute accordingly. No costs. Direct service is permitted.

23-7-2003 (Jayant Patel, J.)

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